

# **CABLE TELEVISION AND COMMUNICATIONS SERVICE AND EASEMENT AGREEMENT**

**THIS AGREEMENT** ("Agreement") is entered into as of the 18<sup>th</sup> day of January, 1999 by and between BAYSWATER TAMPA BAY, LLC, ("BAYSWATER"), a Delaware Limited Liability Co., 100 South Bedford Road Mt. Kisco, New York 100549 and FSN CABLE, INC., ("FSN CABLE"), a Florida corporation, 8949 Gall Boulevard, Zephyrhills, Florida 33541-7410.

## **RECITALS**

**WHEREAS**, BAYSWATER is the owner of a residential golf course community development known as Tampa Bay Golf and Country Club, consisting of a planned total of approximately 1,600 residential units, situated on certain real property located in Pasco County, Florida ("the Property"), more specifically described in that certain warranty deed recorded in Pasco County Book 3296, Pages 0387-91, *et seq.*, of the Public Records of Pasco County, and in Exhibit 1 attached hereto; and

**WHEREAS**, BAYSWATER and FSN CABLE desire to enter into an agreement and easement for cable television and communications service to the Property.

**IN CONSIDERATION** of the mutual covenants and conditions hereinafter set forth and the mutual benefits derived hereunder and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

**Section1. Warranty of Authority.** BAYSWATER represents and warrants that it is the legally constituted entity which owns fee simple title to the Property, which is described in Exhibit 1, attached hereto and incorporated herein, and has the right and authority to make and bind itself to this Agreement and to convey and enforce the easement to be granted to FSN CABLE hereunder. BAYSWATER hereby indemnifies and holds FSN CABLE harmless against all claims, losses and damages arising from or related to the inaccuracy or falsity of any of BAYSWATER's representations herein.

**Section2. Right to Serve.** BAYSWATER hereby grants to FSN CABLE the right to install, construct, operate, maintain, repair, replace, upgrade, remove and market a cable television and communication system (the "System") on the Property and all expansions and extensions thereof. For purposes of the Agreement, cable television and communications services include, without limitation, all video and audio entertainment and informational services distributed by coaxial cable, satellite master antenna, microwave, fiber optics, multi-point distribution system, direct broadcast satellite and any other similar means, technologies or systems now or hereafter used, employed or developed. Notwithstanding the foregoing, nothing herein shall preclude residents of the Property from receiving commercial broadcast network over-the-air television which is made available to the general public without charge therefor and which is provided over-the-air by commercial networks (such as ABC, CBS, NBC, etc.) or their affiliates.

**Section3. Perpetual Non-exclusive Easement.** BAYSWATER shall contemporaneously herewith grant to FSN CABLE a perpetual, non-exclusive easement upon, under, over, through and across the

Property and all buildings and improvements thereon for ingress and egress for the purpose of constructing, installing, maintaining, operating, repairing, upgrading, removing and marketing the System. FSN CABLE's easement shall be limited to an area five (5) feet on each side of any cable, pedestals or other similar cable television facilities installed by FSN CABLE, except that in addition thereto FSN CABLE shall have such rights with respect to any utility easements shown on any recorded plat as are set forth in Section 177.091(29), Florida Statutes (1995), as such statute may be amended from time to time, and such access and easement rights as may be set forth in any applicable recorded deeds, covenants and declarations pertaining to the Property. FSN CABLE shall have free access to the Property and BAYSWATER's buildings and improvements thereon for the purpose of solicitation of subscribers, installation, maintenance, disconnection and removal of its services and the System. Said easement shall be in the form attached hereto as Exhibit 2 and shall be deemed a covenant running with the land. It is the intent of the parties hereto that said easement shall be binding upon all parties hereto, their successors and assigns, and shall survive termination of this Agreement.

**Section 4. Installation and Maintenance of System.**

- 4.1 Except for any injury or damage to the System caused by BAYSWATER or its employees, agents or contractors, the responsibility for and cost of which shall be BAYSWATER's, FSN CABLE shall be responsible for and pay for the installation, maintenance and operation of the System. FSN CABLE shall install, maintain and operate the System in accordance with sound and generally accepted engineering and construction practices and procedures and in accordance with all applicable laws, rules and regulations that may be prescribed by any governmental authority of competent jurisdiction. All installation, repairs, maintenance or modifications of FSN CABLE's equipment on the Property shall be performed only by FSN CABLE or its authorized agents.
- 4.2 FSN CABLE will not be responsible for providing equipment required by cable customers in their residences, for the tuning and reception of the basic bulk programming services provided for herein.
- 4.3 BAYSWATER, when it has such specific knowledge in its actual possession, shall provide FSN CABLE with the location of all underground water, sewer, gas, telephone and electrical service lines and other facilities upon FSN CABLE's request.
- 4.4 FSN CABLE represents and warrants that it has, and at all times throughout the term of this Agreement shall maintain, in full force and effect such licenses, permits, approvals and authorizations from applicable governmental agencies as are necessary or required in connection with the installation, use, operation and maintenance of the System.
- 4.5 Notwithstanding any other provision of this Agreement, FSN CABLE shall conduct all installation, maintenance, construction, operation and marketing of its System during regular business hours, currently eight AM to eight PM, except in case of emergency or interruption of service, and shall make reasonable efforts to minimize any disturbance to residents of the Property. FSN CABLE shall restore any areas disturbed by such activities as nearly as reasonably possible to the condition that existed prior to the disturbance.
- 4.6 At no cost to BAYSWATER, subject to the limitations set forth in Section 4.6 below, FSN CABLE will provide one cable television channel ("community channel") for the exclusive use of BAYSWATER, or a community association designated by BAYSWATER, on the Property, such use

to be at BAYSWATER's sole discretion. At no cost to BAYSWATER, FSN CABLE will provide one character generator for BAYSWATER's use in connection with the community channel. FSN CABLE shall be responsible for all maintenance, repair or replacement of the equipment for its first twelve full months of operation.

4.7 FSN CABLE shall not be responsible for any programming or content transmitted by BAYSWATER or its permitted assigns on BAYSWATER's exclusive community channel. BAYSWATER covenants that it shall not use, and shall not permit its permitted assigns to use, the exclusive community channel provided for hereunder in any manner which would violate federal, state or local laws or regulations. BAYSWATER and its successors and permitted assigns hereby indemnify and hold FSN CABLE, and its affiliates, harmless against all claims, liability or damages whatsoever arising from the use of the exclusive community channel by BAYSWATER or its successors and permitted assigns, including, without limitation, liability for copyright infringement.

4.8 At no cost to BAYSWATER, FSN CABLE shall provide a connection and complimentary basic cable television service to the clubhouse(s), golf course maintenance building and any manned entrance(s) or security station(s) located on the Property.

**Section 5. Ownership of Equipment.** FSN CABLE shall be the sole and exclusive owner of the System and related equipment installed on the Property by FSN CABLE or its agents. Such facilities and equipment shall not be deemed fixtures. At and following expiration or termination of the Agreement, FSN CABLE shall have the option to remove any or all of its equipment from the Property and the right to such access to the Property as is necessary for that purpose. FSN CABLE shall be responsible for any physical damage to the Property occasioned by such removal. At the expiration or termination of the Agreement, FSN CABLE shall have the right, under separate contract with individual occupants residing on the Property, to continue to provide cable television and communication services to those subscribers who desire such services. The provisions of this section shall survive expiration or termination of this Agreement.

**Section 6. Program Services and Charges.**

6.1 Subject to BAYSWATER's timely and complete payment of the bulk cable television and communications service fees provided herein, FSN CABLE TV shall initially make available up to six pre-wired cable outlets in each of the residences to be located on the Property specified by BAYSWATER. Initially the programming services shall be as indicated in Exhibit 3, attached hereto and incorporated herein. From time to time, at FSN CABLE TV's sole discretion, and upon the giving of proper notice, the programming services may be added to, deleted from or substituted for, services in this Exhibit. Residences shall be connected to the System as requested by BAYSWATER and added to the monthly billing at the time that BAYSWATER notifies FSN CABLE TV that the residence is occupied.

6.2 BAYSWATER shall be billed for the above-stated services and shall pay FSN CABLE TV monthly a service fee in an amount equal to the number of residential units located on the Property which have been connected to the System, multiplied by a per unit rate for the then current Premium Basic Service or its designated successor, discounted to fifty percent of its retail published price list value, plus applicable sales taxes and franchise fees. A copy of the current published Retail Price List is provided at Exhibit 4, attached hereto. No monthly billing rate shall be charged for any unit or

unsold model that has not been connected to the System. Once a residential unit is placed on the bulk rate billing account it shall not be removed for billing purposes. All billing statements rendered pursuant to this Agreement shall be paid by the due date stated thereupon and if not paid by that date shall be subject to late charges of the lesser of one and one-half percent (1.5%) per month or the highest permissible interest rate chargeable under the laws of the state of Florida.

- 6.3 The above-stated bulk rate will remain effective until August 31, 1999, (Rate Period 1). For the next three full years, (Rate Periods 2, 3 and 4) no such annual adjustment shall exceed five percent (5%) of the rate, excluding taxes and franchise fees, in effect for the preceding year; except, that at the end of any month, during Rate Periods 2, 3 and 4, if the total of the monthly programming fees has increased, since September 1<sup>st</sup>, by a total equal to one half of the current years increase, a "cost increase pass through" adjustment may be made with the giving of thirty days notice. At the end of this three year period the rates will be adjusted, through negotiation to bring the rates into line with the rates charged to similar FSN CABLE TV customers in highly similar agreements involving construction, calculation and billing.

**Section7. Damage to Persons and Property.** The construction, maintenance, repair and operation of the System shall be accomplished so as to cause as little interference with other activities on and uses of the Property as reasonably feasible. FSN CABLE shall promptly repair and restore any damage within the Property caused by or incident to the actions or omissions of FSN CABLE, its agents, employees or contractors, occurring in the course of exercising its rights or obligations under this Agreement. FSN CABLE agrees that it will indemnify and hold BAYSWATER harmless from any and all paid or incurred actual losses, claims, damages or liabilities of every kind and description, absolute and contingent, including, without limitation, attorney's fees and court costs, which may arise from any actions on the part of FSN CABLE in relation to this Agreement or the easement to be granted hereunder. FSN CABLE will provide a certificate of liability insurance to BAYSWATER upon execution of this Agreement, with liability limits in the amount of One Million Dollars (\$1,000,000.00).

**Section8. Duration of Agreement.** Unless sooner terminated as provided for in this Agreement, the first term of this Agreement shall continue and remain in full force and effect until 95 percent of the residential units are built and become subject to this agreement. The second term of the agreement shall begin immediately following the first term and shall last for a period of five years. Thereinafter this Agreement will be automatically renewed for additional terms of one year each unless either party gives the other written notice of its intent not to renew at least ninety (90) days prior to expiration of any yearly term. In the event of a renewal, FSN CABLE shall be entitled to make rate adjustments on an annual basis as set forth above for the renewal term. All easements granted pursuant to this Agreement or any modification or renewal of it shall survive the termination of this Agreement or any modification of it.

**Section9. Default and Remedies.**

- 9.1 If any party shall breach any term, covenant or condition of this Agreement, and such breach shall continue for thirty days after written notice thereof is given to the defaulting party, then, without further notice, the non-defaulting party may pursue any and all rights and remedies available to it by reason of such breach, whether at law or in equity, including, without limitation, the right to terminate this Agreement for any material breach.

9.2 All rights, privileges and remedies afforded the parties shall be deemed cumulative, and the exercise of any one of such remedies shall not be deemed a waiver of any rights, privileges or remedies herein provided. Either party may waive any provision, breach or default of this Agreement; provided, however, no waiver of any provision, breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any other provision or of any subsequent breach of default of the same or similar nature.

9.3 If any party is found to have violated the terms of this contract by a court of competent jurisdiction, the prevailing party in such an action shall be entitled to reimbursement by the losing party of all costs of litigation, including, but not limited to, court costs and reasonable attorney's fees, including such costs and fees in any appellate proceeding.

**Section 10. Force Majeure.** No party to this Agreement shall be liable for damages due to delay or failure to perform any obligation under this Agreement if such delay or failure results directly or indirectly from circumstances beyond the control of such party. Such circumstances shall include, but shall not be limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, acts of the government in either its sovereign or contractual capacity, disruption of telecommunications transmissions, inability to obtain suitable equipment or components, accident, fire, water damages, flood, storm, earthquake, sinkhole or other subsidence, or other natural catastrophes.

**Section 11. Notices.** All notices or communications required hereunder or which any party desires to serve on another shall be in writing and shall be served by certified mail or by personal delivery at the addresses set forth below, or to such other addresses as may from time to time be designated in writing and delivered in accordance herewith:

FSN CABLE:	FSN CABLE, INC. General Manager 8949 Gall Boulevard Zephyrhills, Florida 33541
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BAYSWATER:	BAYSWATER TAMPA BAY, LLC 100 South Bedford Road Mt. Kisco, New York 10549
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**Section 12. Authority to Execute.** Each individual executing this Agreement as a representative of one of the parties represents and warrants by his or her execution hereof that he or she is fully authorized to represent such party and to execute this Agreement on that party's behalf and that this Agreement and all transactions contemplated hereby have been duly and validly authorized by all necessary actions by the party represented and constitute a valid and binding obligation of the party represented enforceable in accordance with the terms of this Agreement.

**Section 13. Controlling Law.** This Agreement shall be controlled by Florida law, except where superseded or controlled by federal law. If any provision of this agreement conflicts with any such laws, the conflicting provision shall be construed so as to eliminate the conflict, giving full controlling effect to the law. Venue for any court action in relation to this county where the Property is located.

**Section 14. Assignability.** Subject to the terms and conditions of this Agreement, each and every one of the conditions, restrictions and provisions contained in this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be freely assignable upon ninety days prior written notice.

**Section 15. Severability.** If any term of this contract is declared to be void or unenforceable by a court of competent jurisdiction, such declaration shall have no effect of the other terms of the contract, which shall remain in effect and fully enforceable.

**Section 16. Integration/Modification.** This document, together with the easement granted hereunder, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understanding between the parties, whether written or oral, on the same subject matter. No modification of this agreement shall be enforceable unless made in writing and executed with the same formalities as this original by the same parties or their lawful assignees.

**Section 17. Miscellaneous.** Section headings used herein are for convenience only and in no way are intended to define or limit the scope of the provisions of the Agreement. For convenience and ease of reference, the third person singular impersonal form of pronoun ("it") has been used herein without regard to the proper grammatical person or gender of the party being referred to. All such references shall be deemed to include the singular or plural person and the masculine, feminine or neuter gender, as required by the context.

**IN WITNESS WHEREOF,** the parties have executed and delivered this Agreement as of the date first set forth above.

For: Bayswater Tampa Bay, LLC

*5/24/99 Gary Friedland, Vice President*

Gary Friedland  
Vice President  
100 South Bedford Road  
Mt. Kisco, New York 10549

*Irene Tiburcio*

Witness Signature

*Irene Tiburcio*

Witness Printed Name

*Janet G Mastropietro*

Witness Signature

*Janet G Mastropietro*

Witness Printed Name

STATE OF NEW YORK, WESTCHESTER COUNTY

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 1999 by Gary Friedland, as Vice President of Bayswater Tampa Bay, LLC a Delaware Limited Liability Co., on behalf of the Company, who is [☒] personally known to me or who has [ ] produced \_\_\_\_\_ as identification.

01KU5035078

Serial Number

*Anthony J. Kunny*

Signature

ANTHONY J. KUNNY  
Notary Public, State of New York  
No. 01KU5035078  
Qualified in Westchester County  
Commission Expires Oct. 24, ~~1998~~  
2000

Commission Expiration Date

Print Name

For: FSN Cable Inc.

John J. McQuaid  
John J. McQuaid  
General Manager  
8949 Gall Boulevard  
Zephyrhills, Florida 33451

Patricia Brankham  
Witness Signature

PATRICIA BRANKHAM  
Witness Printed Name

Tamara L. Humphries  
Witness Signature

Tamara L. Humphries  
Witness Printed Name

STATE OF FLORIDA, PASCO COUNTY

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of May, 1999 by John J. McQuaid, as General Manager of FSN Cable, Inc. a Florida corporation, on behalf of the corporation, who is ☒ personally known to me or who has ☐ produced \_\_\_\_\_ as identification.

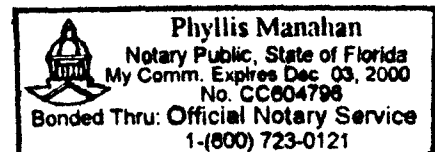
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Dec. 03, 2000  
Commission Expiration Date

Phyllis Manahan  
Signature

Seal

Phyllis Manahan  
Print Name



## EXHIBIT 2

### EASEMENT FOR CABLE TELEVISION AND COMMUNICATIONS SERVICE

THIS INSTRUMENT PREPARED

WITHOUT TITLE EXAMINATION

PARCEL ID NO. SC 17, TP 25, RG 20, SUB 0000. Pasco County Property Appraiser Book 3296, Page 0387.

### **EASEMENT FOR CABLE TELEVISION AND COMMUNICATIONS SERVICE**

**THIS EASEMENT DEED** is made and delivered the 24<sup>th</sup> day of May, 1999 by Bayswater Tampa Bay, LLC (hereinafter referred to as GRANTOR), a Florida corporation, to FSN Cable, Inc. (hereinafter referred to as GRANTEE), a Florida corporation, having its principal place of business at 8949 Gall Boulevard, Zephyrhills, Florida 33541.

GRANTOR, in consideration of GRANTEE's covenants and promises contained in the Cable Television and Communications Service and Easement Agreement entered into by the parties contemporaneously herewith and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, being the lawful owner of the following described land situated in Pasco County, Florida:

See Exhibit "A" attached hereto and herein incorporated by reference (hereinafter "Property")

HEREBY GRANTS, bargains and sells to GRANTEE, its agents, successors and assigns, a perpetual, non-exclusive easement and private right-of-way forever upon, under, over and across the above-described property for ingress and egress for the purpose of constructing, installing, maintaining, operating, repairing, replacing, upgrading and marketing GRANTEE's cable television and other communications facilities (including, without limitation, wires, conduits, connectors and related equipment) and services, installed or to be installed from time to time; together with the right to reconstruct, relocate, improve, add to and remove any such facilities. It is the express intent of the parties that this easement shall be construed as a covenant running with the land, shall be for the benefit of GRANTEE and its lawful successors and assigns, and shall be binding upon the parties and their lawful successors and assigns.

For purposes of the Agreement, cable television and communications services include, without limitation, all video and audio entertainment and informational services distributed by coaxial cable, satellite master antenna, microwave, fiber optics, multi-point distribution system, direct broadcast satellite and any other similar means, technologies or systems now or hereafter used, employed or developed.

GRANTEE's easement shall be limited to platted utility easements shown on any recorded plat as are set forth in Section 177.091(29), Florida Statutes (1997), as such statute may be amended from time to time, and such access and easement rights as may be set forth in any applicable recorded deeds, covenants and declarations pertaining to the property. Provided, however, GRANTEE shall have free access to the Property for the purposes of solicitation of subscribers, installation, maintenance, disconnection and removal of its services and its System. The GRANTEE shall be responsible for restoring and/or repairing



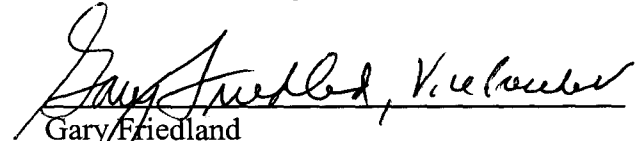
any damage to the property or any improvements therein occurring in connection with the GRANTEE's use of this easement.

GRANTOR hereby covenants with GRANTEE that GRANTOR is lawfully seized of this land in fee simple; that GRANTOR has good right and legal authority to sell and convey the described interest in land.

GRANTEE, by acceptance of this Easement, agrees for itself, its successors and assigns, to maintain said Easement and in no way unreasonably interfere with the right of ingress or egress of GRANTOR, its successors and assigns or any other party requiring access to the property on or under which the said Easement is granted. Further, GRANTEE shall fully comply with the requirements of law, including but not limited to, the requirements of Section 177.091(29),

**IN WITNESS WHEREOF**, GRANTOR has executed this easement deed in its name and has affixed its seal hereto, by its proper officers, duly authorized to do so, before the undersigned witnesses, on the date first written above.

For: Bayswater Tampa Bay, LLC

  
\_\_\_\_\_  
Gary Friedland

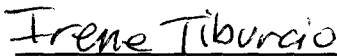
Vice President

100 South Bedford Road

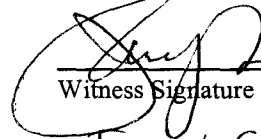
Mt. Kisco, New York 10549

  
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Witness Signature

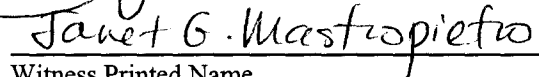
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Witness Signature

  
\_\_\_\_\_  
Witness Printed Name

Witness Printed Name

~~NEW YORK WESTCHESTER~~

STATE OF ~~FLORIDA~~, ~~PASCO~~ COUNTY

The foregoing instrument was acknowledged before me this 24<sup>TH</sup> day of May, 1999 by Gary Friedland, as Vice President of Bayswater Tampa Bay, LLC a Florida corporation, on behalf of the corporation, who is [☒] personally known to me or who has [ ] produced \_\_\_\_\_ as identification.

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Serial Number

OCT. 24, 2000  
\_\_\_\_\_  
Commission Expiration Date

Commission Expiration Date

  
\_\_\_\_\_  
Signature

Signature

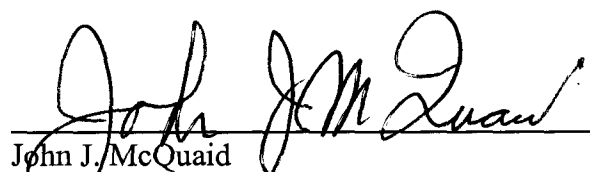
Seal


ANTHONY J. KUNNY  
\_\_\_\_\_  
Print Name

Print Name

ANTHONY J. KUNNY  
Notary Public, State of New York  
No. 01KU5035078  
Qualified in Westchester County  
Commission Expires Oct. 24, ~~1999~~ 2000

For: FSN Cable Inc.

  
John J. McQuaid  
General Manager  
8949 Gall Boulevard  
Zephyrhills, Florida 33451

  
\_\_\_\_\_  
Witness Signature

  
\_\_\_\_\_  
Witness Printed Name

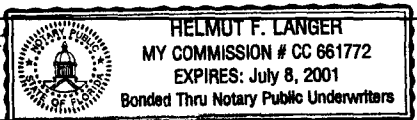
  
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Witness Signature

  
\_\_\_\_\_  
Witness Printed Name

STATE OF FLORIDA, PASCO COUNTY

The foregoing instrument was acknowledged before me this 19 day of May, 1999 by John J. McQuaid, as General Manager of FSN Cable, Inc. a Florida corporation, on behalf of the corporation, who is [☒] personally known to me or who has [ ] produced \_\_\_\_\_ as identification.

Serial Number \_\_\_\_\_



Commission Expiration Date \_\_\_\_\_

  
\_\_\_\_\_  
Signature

Seal

Helmut F Langer  
\_\_\_\_\_  
Print Name

## **EXHIBIT 1**

### **LEGAL DESCRIPTION**

The legal description of the property referred to in the attached CABLE TELEVISION AND COMMUNICATIONS SERVICE AND EASEMENT AGREEMENT is legally described in the copy of the Pasco County Property Record Book, Book 3296, Pages 0388 – 91, a copy of which is attached to and made a part of this Exhibit:

*See Attached Copy*